

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ZENITH INSURANCE COMPANY	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 18-3844
	)	
DEPARTMENT OF FINANCIAL	)	
SERVICES, DIVISION OF	)	
WORKERS' COMPENSATION,	)	
	)	
Respondent.	)	
	)	

DEPOSITION OF CAROL BRODIE

DATE TAKEN: September 19, 2018

TIME: 8:35 a.m. to 9:20 a.m.

PLACE TAKEN: Martina-Mikulice Reporting Services  
2069 First Street, Suite 201,  
Fort Myers, Florida

PURSUANT TO: Notice by the Respondent

REPORTER: Tammy S. Hoffmann, RMR FPR  
Notary Public,  
State of Florida at Large

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A P P E A R A N C E S

Ralph Douglas, Esquire,  
(Appearing Via Telephone)  
McConnoughhay, Coonrod, Pope, Weaver & Stern, P.A.  
1709 Hermitage Blvd., Suite 200,  
Tallahassee, Florida;  
representing the Petitioner.

Tabitha G. Harnage, Esquire,  
(Appearing Via Telephone)  
Senior Attorney, Workers' Compensation,  
Department of Financial Services  
Office of the General Counsel  
200 East Gaines Street  
Tallahassee, Florida;  
representing the Respondent.

I N D E X

Direct Examination by Ms. Harnage

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(Deposition commenced at 8:35 a.m.)

CAROL BRODIE,  
having been first duly sworn, was examined and testified as  
follows:

DIRECT EXAMINATION

BY MS. HARNAGE:

Q. Hi, Ms. Brodie. Good morning. Thank you for coming  
in today. My name is Tabitha Harnage. I represent the  
Department of Financial Services in this matter of Zenith versus  
the Department of Financial Services. The M.S.S. case number as  
I'm you are aware is 2016-0420005 and I'm going to be asking you  
some questions about this case, the E.O.B.R., the carrier  
response, the contracts involved. So I know you have done some  
work. If you don't understand anything or need me to rephrase  
or you can't hear me or don't know the answer, please just let  
me know. Your attorney is on the phone also as you are aware.  
So do you have any questions about anything I just said?

A. No, I don't.

Q. Okay. And can you just state your name, spelling your  
last name.

A. Carol Brodie, B-r-o-d-i-e.

Q. And, Ms. Brodie, can you tell me where your -- where  
you work, how long you have been there and what you do?

A. I work at the Zenith Insurance Company. My title is  
bill review attorney. I have worked there since May of 2010, so

1 just about a little over eight years. My role is I work with  
2 the bill review department to adjudicate bills pursuant to all  
3 of the rules and statutes for each jurisdiction that we do  
4 business in. I manage the reimbursement dispute process or I  
5 have oversight over that process and I assist the nurses, the  
6 medical auditors in some of their negotiations.

7 Q. Okay. And then I mentioned the M.S.S. case number  
8 ending in 005. Are you familiar with that matter?

9 A. Yes.

10 Q. Okay. Can you tell me how you are familiar with it?

11 A. Like I said, I am responsible or I have oversight into  
12 all of the reimbursement disputes, so this was a bill back from  
13 the beginning of 2016 that the medical auditor reviewed,  
14 discussed with me. We paid the bill and a reimbursement dispute  
15 was filed to which we responded and O.M.S. then made a  
16 determination and we have appealed it and that's what this  
17 matter is about.

18 Q. All right. So I'm going to be asking questions  
19 specifically about the E.O.B.R. and the carrier response. Are  
20 you familiar enough with I guess the case that I can speak to  
21 you about that?

22 A. Yes.

23 Q. So let's go -- do you have any documentation with you  
24 today?

25 A. I brought a copy of my C.V. in case you asked me

1 anything that I didn't remember. I also brought the carrier  
2 response and the E.O.B.R. in case I need to refer to it.

3 Q. Perfect. I will be asking about the E.O.B.R. and the  
4 carrier response.

5 A. Okay.

6 Q. I will ask about the contract and you can speak from  
7 memory and if for some reason -- you don't need to guess or  
8 anything but, obviously, when we will get into that let me know  
9 if you know or not.

10 A. Okay.

11 Q. Okay. Tell me a little bit about the process. I  
12 don't want you to get into any like proprietary information but  
13 tell me the process of when I guess Zenith gets a bill from a  
14 medical provider and the process of reviewing that and then  
15 paying or adjusting -- I guess let me rephrase. That is a long  
16 question. The process of getting a bill to sending the E.O.B.R.  
17 Can you explain that to me?

18 A. Okay. I will give you kind of a general high level.  
19 If you have specific questions, we can go into those but  
20 generally a bill is submitted to Zenith. It is inputted  
21 electronically into our bill review software. That bill review  
22 software then does its own programming and it bumps up against  
23 the claims system and inputs the claim information and then  
24 depending on the type of bill it is, it gets routed to different  
25 departments or different people to analyze and review. These

1 hospital bills, generally, the larger amount of hospital bills  
2 generally are routed to a team called the medical auditor team.  
3 That's a group of nurses who have experience, degrees,  
4 certifications in medical billing and medical review and the  
5 bills are reviewed for compensability, the correct body part,  
6 whether the services rendered were related to the compensable  
7 body parts, whether all of the documentation submitted with the  
8 bill supports the services that were rendered and they review  
9 and audit each of these bills. When they do that then they will  
10 sometimes pull me in if there are questions as to the  
11 jurisdiction of the bill and what we -- what the rules say about  
12 how we go about paying or processing that bill. And then I give  
13 my opinion and we work together to make the final determination  
14 how a bill is going to be processed.

15 Q. When you say medical auditor team, would Linda Joy be  
16 one of those people?

17 A. Yes, she is.

18 Q. Okay. And I appreciate that overview. I'm just going  
19 to follow-up with a few questions. So when it goes to the  
20 medical auditor team and they review specifically different  
21 things you mentioned you said they reviewed documents received.  
22 What are some of the documents, like examples of some documents  
23 that the medical auditor would review in that process?

24 A. For the inpatient -- excuse me, for the inpatient  
25 bills it would be all of the medical records that are submitted

1 with the bills, so that would include doctor's orders, nursing  
2 notes, nursing flow sheets, O.R. records, anesthesia records.  
3 Well, I'm sorry, let me back up. First, there is the billing  
4 form which would be the U.B.O. 4 for an inpatient record or  
5 inpatient bill, excuse me, plus the itemization which is the  
6 multi-page printout that supports the actual bill that they  
7 charged. So what the auditors do -- oh, I'm sorry, back to the  
8 records. So there are various flow sheets. There are invoices.  
9 There are checklists that outline all of the things that were  
10 used in the O.R., respiratory records, flow sheets and records  
11 and just about anything that -- well, anything that is done to  
12 the patient in the hospital we have asked for to review the  
13 record.

14 Q. And whenever you receive -- or whenever the medical  
15 auditing team is reviewing these records, is there ever a time  
16 where you -- like Zenith would go back to the provider and say,  
17 hey, in order to review this bill I need this also, like is  
18 there ever something like that where you don't have enough  
19 information to audit a bill that you would go back and then  
20 request additional information?

21 A. Yes, that happens.

22 Q. And what -- can you give me an example of like what  
23 would cause that and maybe an example of the additional  
24 documentation Zenith would request?

25 A. Sometimes the provider will not include implant

1 invoices, for example, and the auditor will first make a call to  
2 see if they can just fax it to them so that we can quickly, you  
3 know, finish this bill. Sometimes they can't reach the provider  
4 so we will have to deny that line item on the bill but invoices  
5 are typical, O.R. records and O.R. supply summary sheets are  
6 common that they are left out of the medical record as well as  
7 doctor's orders. Those I think would be typical things that  
8 we -- that we have to request.

9 Q. And when -- you mentioned that the medical auditor  
10 team will sometimes request your assistance regarding you  
11 mentioned jurisdiction and rules, do you remember that?

12 A. Correct, yes.

13 Q. Can you just elaborate on that and maybe give me some  
14 examples of questions about jurisdiction or rules that you would  
15 assist in?

16 A. We have -- we do business in multiple states and our  
17 medical auditors audit in multiple states. They are not  
18 assigned to only a specific state, so we have, you know, some  
19 tools so that they know what the rules are in each state but  
20 sometimes they just have questions. There -- like for an  
21 example I guess would be if they want to know -- they have an  
22 inpatient bill but they don't have any orders from the doctor  
23 and they can't obtain any orders from the doctor that it said to  
24 admit the patient. It was authorized as an outpatient. It  
25 appears from the records that we have that this was strictly



1 outpatient, so the question might be can I switch this to an  
2 outpatient bill and pay it that way.

3 Q. Got you. Okay. Let's go to this specific case, the  
4 one ending 005 and feel free to refer to the E.O.B.R. or carrier  
5 response for any answers to these questions. So can you -- this  
6 may be more for Linda Joy, so if you don't know, please let me  
7 know but for this particular case can you let me know, if you  
8 know, what the process was for this case and Zenith -- excuse  
9 me, I'm sorry, Zenith receiving a bill and doing the review and  
10 audit process through the E.O.B.R. in this specific case?

11 A. When Linda was -- I mean, she can clearly tell you  
12 what she was thinking and why she reached out but she did reach  
13 out to me when she was reviewing this bill. There was -- this  
14 was a four-day I believe inpatient stay. We did authorize it as  
15 outpatient. It turned into an inpatient stay and we felt that  
16 was medically necessary and appropriate. That was not the issue  
17 at all. However, as she was reviewing the medical records the  
18 provider included a Medicare coding sheet in there which  
19 indicates what they accept from Medicare for this particular  
20 admission. So that was a flag because there was a huge  
21 discrepancy between what they would accept if this was a  
22 Medicare patient versus what they were demanding as a work comp  
23 patient. So Linda and I started to discuss this bill because  
24 their billed charges were so excessive that it flew this -- or  
25 raised this reimbursement into a very unreasonable amount.

1 So -- so Linda and I started talking about it. She identified  
2 various line items on the bill where the charges were extremely  
3 high, outside of what we see from other providers in the geo  
4 area and so we started doing some comparisons on what other  
5 providers would accept, what would Medicare accept -- well, we  
6 knew what Medicare would accept for this bill because Lawnwood  
7 told us in that coding sheet, however, Linda did -- we have a  
8 tool available to us where we can go in and plug in the  
9 provider's information, the hospital's information and then also  
10 plug in the specifics about an individual bill. So Linda did  
11 that and calculated what our tool says that Medicare would pay.  
12 That amount was a little different, was a little higher which,  
13 you know, we understand a little variation. That's fine but --  
14 so we started looking at this bill and had some questions on why  
15 the discrepancy remained between the bill charge and what the  
16 75 percent of that high amount would render as a  
17 determination -- or as a reimbursement versus what this provider  
18 would get from Medicare or what other providers would get for  
19 this similar surgery. So that's why we reviewed this bill.

20 Q. So you get the designation and then I guess who  
21 decides or like how does Zenith decide what codes to use or how  
22 to reimburse? Again, I don't want any proprietary information  
23 but I guess how do you go from getting a bill to reimbursing in  
24 this matter Zenith on their E.O.B.R. allow \$31,844.70, do you  
25 see that on the carrier response, how -- what's the process I

1 guess for this particular bill going from the billed charges in  
2 excess of one sixty-three thousand to thirty-one?

3 A. What --

4 MR. DOUGLAS: Just for the record, form objection.  
5 THE WITNESS: Okay.

6 MR. DOUGLAS: And let me say are you asking what  
7 the -- it is kind of two different groups of questions,  
8 what E.O.B. codes were used or how they got there or there  
9 was a lot floating around in that question.

10 MS. HARNAGE: It is a lot, so I guess, Carol, like  
11 how -- how was Zenith -- you see the codes on there, 81, 92  
12 and 93. I guess what is the process of putting those codes  
13 in this particular E.O.B.R.

14 MR. DOUGLAS: Form objection. Generally or why they  
15 used this codes?

16 MS. HARNAGE: In this particular situation.

17 MR. DOUGLAS: Carol, do you understand the question?

18 THE WITNESS: Yes. Okay. As you know, Tabitha, there  
19 are set codes that you can use in the state of Florida that  
20 are mandated codes that you have to use and we are limited  
21 to those codes. The statute clearly says or the rule, I'm  
22 not sure if it is a statute or the rule that clearly says  
23 you have to use -- the only communication that is accepted  
24 by the state is through use of those codes. So you will  
25 see on one of the line items we denied it entirely for lack

1 of documentation and I believe that was the invoice line  
2 and that was I think code 47. I'm not looking at my thing.  
3 I'm trying to remember. 81 is the code that we use and was  
4 used on this bill when we do an audit of the bill and so  
5 that code I believe you will see on all of the lines  
6 because Linda performed a line item audit. She looked at  
7 every line on the itemization so then 82 --

8 BY MS. HARNAGE:

9 Q. Carol, you can look at it.

10 A. Okay. I'm going to look. I thought I -- I thought my  
11 memory was going to be good but we know how that goes.

12 Q. No, your memory is definitely very good so far but  
13 some little nuances, you might need to look.

14 A. Yes, so 81 is we adjusted pursuant to a charge audit  
15 and that is the code that we use when the nurses do a line item  
16 audit of the bill. 92 is made pursuant to the workers'  
17 compensation reimbursement manual and we do put that on there  
18 because this bill fell into the inpatient manual. So we -- in  
19 Florida again as you know, you can put up to three codes and we  
20 routinely put up to three codes if they are applicable. So  
21 because this was an inpatient bill we put 92 on the bill. And  
22 then 93 is the code we use when they have a network contract.  
23 So this bill did. They had a P.P.O. contract attached to them,  
24 attached to Lawnwood has a P.P.O., so we applied that reduction  
25 and you see that, you know, in parenthesis it says see P.P.O.

1 above or note below and we say that it was priced in accordance  
2 with your Coventry contract.

3 Q. Okay. So let's go to the code 81. So I'm just going  
4 to read and you probably know this, read in the workers' comp  
5 statute -- I'm sorry, the rule, code 81 says payment adjusted,  
6 billing error, payment modified pursuant to a charge audit. Are  
7 you familiar obviously with that code?

8 A. Yes.

9 Q. Okay. And so in the line item audit that was done in  
10 this case, what -- tell me what that is I guess specifically,  
11 the line item audit that was done so you can say 81. Do you  
12 understand my question?

13 MR. DOUGLAS: Form objection.

14 THE WITNESS: Can you rephrase it?

15 BY MS. HARNAGE:

16 Q. Yeah. So 81 was used and in the rule it says pursuant  
17 to a charge audit. Can you tell me what charge audit Zenith did  
18 for putting 81 in there?

19 A. We reviewed each line item of the bill and our  
20 interpretation of what a charge audit is is that we are  
21 reviewing the bill for completeness, for over utilization, for  
22 billing errors, for documentation, so we audited the entire bill  
23 so that code was applicable to each of the line items on the  
24 bill.

25 Q. Got you. Okay. Are you familiar with what a charge

1 master is?

2 A. Yes.

3 Q. What -- what is your I guess understanding of what  
4 that is generally?

5 A. A charge master is the document I guess or the master  
6 charges that a hospital determines they are going to charge for  
7 each of their services, supplies. It is a large book per code  
8 that tells what they charge for that service or supply.

9 Q. Does -- I guess if you don't understand let me know  
10 but does Zenith ever -- do you all ever see that I guess  
11 generally like a charge master whenever you are reviewing or  
12 auditing bills?

13 A. We have. We don't routinely -- the providers do not  
14 submit that information with their bill but we have seen it.

15 Q. What's the purpose I guess of you all ever seeing it  
16 like you all -- like when you get it, is it ever relevant to  
17 your audit?

18 MR. DOUGLAS: Form objection.

19 THE WITNESS: Okay. Have we ever seen it? Yes. We  
20 have asked for it before. We have gone on site to do  
21 on-site audits before. The second part of your question  
22 was is it relevant. No, it never is.

23 BY MS. HARNAGE:

24 Q. Okay. And I guess what -- and that goes to my  
25 specific question. So whenever you would go -- like you just

1 said on-site audit, what would the purpose be to do like for  
2 that?

3 A. There is a provision in the process. It's either a  
4 rule -- I think it is within the rules that if -- the carrier  
5 has the right to go on site and look at the provider's charge  
6 master to verify that their charge master matches the charges  
7 that were received on the bill. So we have done that before  
8 many, many years ago when we started to see all of these hyper  
9 inflated charges and we found that their charge master  
10 absolutely matches their bill because that's not the issue. The  
11 charges are kind of irrelevant. The charges are what they are  
12 and they are free to charge whatever they want to charge. It's  
13 the reimbursement that is the issue but also I just wanted to  
14 get in that we have asked for copies of the charge masters  
15 before just because, you know, providers are all over the state  
16 and we have -- some providers will just copy that page and send  
17 it to us but some providers refuse to provide that information,  
18 so we have had situations where we have been denied access to  
19 the charge master by fax or e-mail but we have also been denied  
20 on-site audits.

21 Q. Do you know if Zenith requested a charge master in  
22 this particular M.S.S. case?

23 A. We did not.

24 Q. Why not?

25 A. Because our experience has shown us that that

1 doesn't -- it doesn't -- it is not relevant. It doesn't make a  
2 difference because we will -- we will assume that their charges  
3 match their charge master.

4 Q. And let's go -- kind of do the same thing with the  
5 other three codes. You said 92 that that code was used. Can  
6 you I guess explain the process why that code was used in this  
7 M.S.S. case specifically with this one?

8 A. Sure. That's the code for an inpatient bill. And so  
9 that is the code that we put on whenever it is -- actually, I'm  
10 sorry, it's for whenever there is a hospital bill. So we put  
11 that on all hospital bills.

12 Q. Okay. And 93?

13 A. 93 is a code that says that payment is pursuant to a  
14 written contractual arrangement. So this is when bills have  
15 P.P.O. networks attached to them. So that's what was the case  
16 here. They have a Coventry contract.

17 Q. So if you know from memory, I appreciate it but if not  
18 just let me know but have you seen the contract that Lawnwood  
19 submitted in their petition for the -- I guess as part of the  
20 contract? Have you seen that?

21 MR. DOUGLAS: Form objection. Which part do you mean,  
22 the rate sheet?

23 MS. HARNAGE: No, the five page document that -- I  
24 believe it is Exhibit F, Exhibit F to the petition for the  
25 reimbursement dispute. It is the one with the five



1 percent, the one that Lawnwood is alleging is applicable.

2 THE WITNESS: When -- if that was -- I don't -- I  
3 can't tell you right now that I recall. I don't know what  
4 it says but if it was submitted with the petition, if it  
5 was their Exhibit F I looked at it when we were drafting  
6 our carrier response. However, our experience is that they  
7 do not submit their full contract. They only submit their  
8 rate sheet. So if it was only five pages, then it was not  
9 their full contract.

10 BY MS. HARNAGE:

11 Q. What -- so is it Zenith's position that there was  
12 another I guess part of the contract that would have applied?

13 A. Yes, and as you know we have a contract with Coventry  
14 and Coventry has a contract with Lawnwood and Coventry and the  
15 providers have asserted that their contract is confidential, so  
16 they don't share it with us. They only share the part of the  
17 contract that says the rate or the discount off of the  
18 reimbursement. So it is our position that there are other terms  
19 of that contract that need to be reviewed and applied and not  
20 just the rate.

21 Q. Okay. What other terms if you know?

22 A. We are presuming that the contract has general  
23 contract terms that we have in our contract with Coventry and is  
24 consistent within most contract languages which is that the  
25 terms and agreements under the contract must be reasonable, that

1 perhaps there is a statement about good faith and fair dealings,  
2 perhaps there is a provision in there in terms of alternative  
3 dispute resolution. We don't know because we have not seen it.

4 MR. DOUGLAS: Okay. Can I jump in, Tabitha? Were you  
5 asking just about the provider portion of their contract or  
6 including our Zenith portion, our other half of the  
7 contract?

8 MS. HARNAGE: So you all know that petitioner -- I  
9 mean Lawnwood provided a contract or a portion of a  
10 contract that they think is relevant, right? I mean, that  
11 they submitted with the petition for the resolution of the  
12 reimbursement dispute.

13 MR. DOUGLAS: Are you asking me or the witness?

14 MS. HARNAGE: I mean Carol.

15 THE WITNESS: Yes, you -- well, like I said, I don't  
16 remember but you told me it was Exhibit F and it was five  
17 pages.

18 MS. HARNAGE: Yeah, and I'm not asking you specifics  
19 since you don't have it in front of you but, yeah, so they  
20 are alleging that this is applicable. What I'm asking is,  
21 is it Zenith's position that there is another contract or  
22 another portion I guess?

23 MR. DOUGLAS: Yeah, legally our position is there are  
24 certainly other language that applies. If not in theirs  
25 both implied by law and written into our contract that

1 gives us certain rights.

2 BY MS. HARNAGE:

3 Q. Okay. But is there -- and if you don't know, say you  
4 don't know, Carol, but is there like a certain percentage of  
5 charges or is there something specific that would be in you  
6 all's contract that would contradict theirs that you know of  
7 or --

8 A. Our contract does not -- because our contract is with  
9 Coventry and Coventry has thousands of contracts, our contract  
10 does not give specific rates.

11 Q. Okay.

12 A. As far as I know.

13 Q. So these questions are just because I don't know. So  
14 I'm not trying to like get you in a corner or anything. What  
15 terms or items in the contract does Zenith feel that are in  
16 there that would allow Zenith to adjust pursuant to the code 93?

17 MR. DOUGLAS: Okay. You are asking generally because  
18 she doesn't have it in front of her, right?

19 MS. HARNAGE: Yes.

20 MR. DOUGLAS: Okay. To the extent you can answer  
21 that, Carol, go ahead.

22 THE WITNESS: Okay. Generally, our contract with  
23 Coventry allows us to apply the provider's contract but it  
24 gives us the right -- we have retain the right to audit,  
25 reduce and reprice bills down to the allowable amount.

1 Now, an allowable amount is not a bill -- not necessarily a  
2 billed amount. An allowable amount is that amount that is  
3 deemed to be reimbursable per the audit. The contract also  
4 allows us to look at bench marking and reprice these bills  
5 to reasonable levels.

6 BY MS. HARNAGE:

7 Q. Okay. Yeah, now I'm understanding. So when you said  
8 that generally the contract would allow Zenith to use bench  
9 marks and things like that to determine if the bill is  
10 reasonable, can you tell me what you mean by bench marks and how  
11 generally -- just explain that process that you just said  
12 specifically with the -- how it would be reasonable.

13 A. Sure. I'm going to tie it specifically to this bill.  
14 Like I had said before, when Linda was looking through the  
15 medical records what jumped out was that Medicare pricing. So  
16 Medicare is a bench mark. Medicare is a generally accepted  
17 definition of reasonable throughout the country. Their bench  
18 mark data or their reimbursement data is based on individual  
19 hospital data specific to that hospital across all payor sources  
20 and looks at their costs and their reimbursements, like I said,  
21 across all payor sources. So Medicare is a bench mark that we  
22 used here. Medicare was going -- the hospital admitted they  
23 would accept eight thousand nine hundred something for this bill  
24 that they were expecting us to pay at, I don't know, over one  
25 hundred and eleven thousand.

1 Another bench mark that we use is Fair Health. Fair Health  
2 is a data base that is embedded in our bill review software but  
3 we also have a stand alone product that we can go in, insert the  
4 exact information on the bill and they will give us a bell  
5 curve, so to speak, of what providers charge, what the median is  
6 versus what 50 percent -- what the 50th percentile on up to the  
7 95th percentile would pay for that bill or what providers  
8 charge.

9 Then the other bench marking that we do and we did on this  
10 bill is what does the provider historically accept as payment,  
11 what does their payment history look like. Then we look at  
12 providers in the community, like providers in the surrounding  
13 area, in their geo area. We look at the health care blue book  
14 which is a data base that was generally created I believe for  
15 consumers to go and look at what medical services cost and then  
16 I think we also looked at medi span which is a pharmacy tool  
17 that the state recognizes on what pharmacy average wholesale  
18 pricing should be and I think -- I think that's generally --  
19 sometimes we use health care engine I believe it is called. I  
20 don't think we used it in this case and then in other states we  
21 have other bench marking that we use but I'm not sure if you  
22 want to hear about that.

23 Q. What was it called, that other bench mark?

24 A. Which one, the health care engine, health engine?

25 Q. Yeah.

1 A. Yeah.

2 Q. What is that?

3 A. It's again a private data base that you can go in. I  
4 believe it is health engine dot com. You can put in specific  
5 codes and geographical information and it will give the range of  
6 provider charges.

7 Q. Okay. Does Zenith -- other than the codes that are in  
8 the rules, does Zenith have any internal I guess codes that they  
9 have reviewed on E.O.B.R.'s?

10 A. No, we don't. We don't. We typically stick to the  
11 state codes.

12 Q. Is there ever a time when Zenith would use other codes  
13 that are not in the rule?

14 MR. DOUGLAS: Form objection, overbroad and vague.  
15 BY MS. HARNAGE:

16 Q. Do you know? Do you understand, Carol?

17 A. I don't have all of the codes in front of me. There  
18 may be an unlimited code that we may use but I don't really  
19 recall.

20 Q. Okay.

21 A. I'm sorry, not unlimited code. A code that you can  
22 put your notes in but, again, we stick to the standardized codes  
23 that the state provides.

24 Q. Okay. And as far as like whenever Zenith does an  
25 audit and determines that a bill is inflated, I guess you would

1 say, is there a code that Zenith would use for that and if so  
2 what?

3 A. No, there isn't one.

4 Q. Do you know Zenith's expert witness, Kevin McCardy?  
5 Do you know of him?

6 A. I know of him.

7 Q. Do you know anything about I guess what his testimony  
8 would be in this case?

9 MR. DOUGLAS: Form objection. That's not necessarily  
10 for her to answer to talk about his testimony. We can  
11 outline briefly what that is and I sent some documentation  
12 to Tom to basically cover that. Otherwise, you will have  
13 to really ask Mr. McCardy.

14 BY MS. HARNAGE:

15 Q. Okay. I just want to know if she knows, like if she  
16 knows I guess what he is going to talk about and if you don't,  
17 Carol, that's fine. Let me know. I just want to know if you --

18 A. I don't know. I don't know any specifics.

19 Q. Okay. Okay. I really appreciate your explanation of  
20 everything, going into these -- the process and everything. So  
21 your attorney may ask you some follow-up questions. I guess I  
22 generally wanted to know did -- you did write the carrier  
23 response, right?

24 A. I did.

25 Q. What is Zenith's I guess position in this case as far

1 as why they did what they did and why they feel it was correct  
2 and do you get my question?

3 MR. DOUGLAS: Form objection but if you can answer it  
4 generally or -- reimburse, what they reimburse.

5 THE WITNESS: I will give you a global answer,  
6 Tabitha, and if you want more specifics because there is a  
7 lot in our carrier response that I think we clearly outline  
8 our position but I guess the bottom line in a sentence or  
9 two is that the statute, you know, 440-13 -- actually going  
10 back to the legislative intent, it talks about this is  
11 supposed to be a self executed system that is based on  
12 common law that is a reasonable priced -- at a reasonable  
13 cost to the employer providing the provider a reasonable  
14 reimbursement. The statute 440-13 talks in at least three  
15 or four different places about reasonableness.

16 The three member panel was charged with creating  
17 maximum reimbursement amounts. They did so in the statute  
18 by providing a per diem inpatient rate. There is nothing  
19 else in the statute about an inpatient -- any other  
20 inpatient rate. The outpatient hospital rate they have the  
21 language usual and customary and it's our understanding  
22 that the office of medical services defines that as the  
23 median -- median charge of providers in that community. So  
24 there is a big discrepancy between inpatient and outpatient  
25 and our position is that the per diem inpatient rate is the



1           only M.R.A. that there really is and an M.R.A. by  
2           definition is a maximum reimbursement amount and the rule  
3           that was made or the manual that talks about a percentage  
4           of bill charged can't be valid because you can't have a  
5           percentage of an open-ended non-defined charge. That  
6           directly conflicts with the plain meaning of the word  
7           maximum. So our position was this bill was so inflated  
8           that it did not meet the definition of a maximum  
9           reimbursement amount. We used our bench marking, our  
10          contract language, the common law, the legislative intent  
11          and the reasonableness of 440-13 to reduce it and we feel  
12          like we are in our right to do that.

13           MS. HARNAGE: Okay. All right, Carol, I don't think I  
14          have any questions. Mr. Douglas may but I really  
15          appreciate your time and all of your details you gave.  
16          Thank you so much.

17           THE WITNESS: You're welcome.

18           MR. DOUGLAS: Give me one second. I don't think I  
19          have anything. Go ahead. We are done then. Carol, if  
20          they decide to order a copy you have a right to read it.  
21          At this point, Tabitha, do you know if you are ordering?

22           MS. HARNAGE: Yes, we are.

23           MR. DOUGLAS: Okay. I will take a copy. Madam court  
24          reporter, she will read.

25           (Deposition concluded at 9:20 a.m.)

1 CERTIFICATE OF OATH  
2

3 STATE OF FLORIDA )

4 COUNTY OF LEE )  
5  
6  
78 I, Tammy S. Hoffmann, Registered Merit Reporter and Notary  
9 Public, State of Florida, certify that Carol Brodie personally  
10 appeared before me on September 18, 2018, and was duly sworn.11 WITNESS my hand and official seal, this 25th day of  
12 September, 2018.  
13  
14  
15  
16  
1718 Tammy S. Hoffmann  
19 Notary Public, State of Florida  
20 My Commission #FF243112  
21 Expires: August 2, 2019  
22  
23  
24  
25

## CERTIFICATE OF REPORTER


STATE OF FLORIDA )

COUNTY OF LEE )

I, Tammy S. Hoffmann, Registered Merit Reporter and Notary Public, State of Florida, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of Carol Brodie consisting of pages 3 through 25.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with this action, nor am I financially interested in the action.

Dated this 25th day of September, 2018.

  
\_\_\_\_\_  
Tammy S. Hoffmann, RMR FPR

## ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

DEPOSITION OF: Carol Brodie

DATE OF DEPOSITION: September 19, 2018

RE: Zenith Insurance Company v. Department of Financial  
Services, Division of Workers' Compensation, No. 18-3844

PAGE	LINE	CHANGE	REASON
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Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

DATE: \_\_\_\_\_

NAME: Carol Brodie

Martina-Mikulice Reporting Services  
2069 First Street, Suite 201,  
Fort Myers, FL 33901  
(239) 334-6545

September 25, 2018

Ms. Carol Brodie  
20380 Happy Dale Lane  
Estero, FL 33928

Re: Zenith Insurance Company v. Department of Financial  
Services, Division of Workers' Compensation, No. 18-3844  
Date taken: September 19, 2018  
Location: Martina-Mikulice Reporting Services

Dear Ms. Brodie:

Your deposition taken in the above-styled case has been  
transcribed.

Please come to our office located at 2069 First Street, Suite  
201, Courtney Building, Fort Myers, Florida 33901, in order to  
complete the reading and signing of the transcript.

Our office hours are from 8:30 a.m. to 4:00 p.m., Monday -  
Friday. Please allow time to complete before 4:00 p.m.

Your prompt attention to this matter is appreciated. If you have  
not appeared within 10 days from the date of this letter, we  
shall conclude that you have waived the reading and signing of  
the deposition transcript.

Sincerely,



Tammy S. Hoffmann  
Court Reporter